F. M. S.

[CRIMINAL REVISIONAL JURISDICTION]
TERRELL, Ag. C.J.
September 14, 1933.

PUBLIC PROSECUTOR
vs.
LIEW HIN *ALIAS* LIEW WAH

[REVISION OF THE DECISION OF THE MAGISTRATE KLANG]

Penal Code Section 498—Enticing away a married woman—Enticement.

It is essential for the prosecution to show on a charge of taking or enticing away a married woman under Section 498 of the Penal Code that the solicitations and advances came from the man.

Record called for and order made on revision *ex parte.*

TERRELL, ACTING C.J.—Under the powers conferred on me by section 55 of the Courts Enactment and section 321 (i) of the Criminal Procedure Code I called for the record in the above case. The accused was convicted of an offence under section 498 of the Penal Code, being charged with enticing away and detaining one Wong Ah Loke knowing her to be a married woman.

Two of the essentials of the offence are (1) that the accused enticed away a married woman and (2) that he knew that she was married. It must be remembered that under the Criminal Law of India adultery is in itself a crime, section 497 of the Penal Code of India, whereas under the Penal Code of the Colony which is law here section 497 has been omitted.

The facts appeared to be that there was a marriage ceremony in China in 1917 between the parents of Wong Ah Loke and of the complainant Khong Yew Kah, who was then three years old. The complainant came with his parents to the Khong Fook Fo Tin Mine at Sungei Way in 1920. Wong Ah Loke did not accompany them but came later. On the 8th April, 1932, Wong Ah Loke left the complainant's house. Over a year later she was found to be living with the accused at Tras in Pahang. Information was then laid and he was arrested.

Wong Ah Loke's evidence in cross-examination is as follows:—

> "It is true that I requested you to take me away. I did tell you that I have no husband. I said so because I was ill-treated by my husband."

Wong Ah Loke was a witness for the prosecution and her evidence which was confirmed by the accused must be accepted. I do not accept the Indian authority *re Kumarasami,* 2 M.H.C. 331, cited in paragraphs 5607 and 5608 of Gour in which Scotland, C.J. lays it down that it is quite immaterial if the woman was the tempter. To my mind it is essential for the purposes of a conviction to prove that the solicitations and advances came from the man. The essence of the case is 'enticement' and the words of a penal section cannot be strained against the accused. If there was no "taking or enticement" there cannot be an offence under section 498.

This interpretation is in accordance with the English authorities on the analogous cases of a charge of taking away a girl under 16 from the possession of her parents, see *Rex* vs. *Jarvis,* 20 Cox Criminal Cases 249, and the English and Indian cases cited in Gour in the notes to paragraph 3807.

Then again there was no evidence that the accused knew she was married. The evidence of Wong Ah Loke herself is to the effect that she told him that she was not married. Even, therefore, if enticement had been proved, there was no *mens rea.*

The accused, therefore, ought never to have been convicted and the conviction must be set aside.

Conviction setaside.

[ORIGINAL CIVIL JURISDICTION]
TERRELL, Ag. C.J.
September, 12, 1933.

COLLECTOR OF LAND REVENUE, KLANG
Applicant

vs.

1. TAN TOH
2. YONG NEE CHAI

Respondents.

[SELANGOR CIVIL APPLICATION No. 88 OF 1933]

Land Code 1926 Sections 141 to 148, 230, 238 and 240—Sale at the instance of chargee—Deposit of duplicate memorandum of charge with Collector—Return to chargee on completion of sale—Powers of Collector to correct errors.

On a sale of land held by Entry in the Mukim Register the Collector has no power to cancel either the original or the duplicate copy of the memorandum of charge and no right after completion of the sale to retain the duplicate copy deposited with him by the chargee in accordance with Section 142 of the Land Code.

The power of the Collector to make corrections under Section 230 (*e*) of the Land Code 1926 is restricted to the correction of errors in documents of title and memorials thereon. The general power of correction conferred by Section 230 (*b*) is ancilliary to the right to call for documents, and does not exist in the case of documents kept in the custody of the Collector.

R. C. Cussen, Deputy Legal Adviser, for Applicant.

Respondent No. 1 absent.

Ramani for Respondent No. 2.

Cur. Adv. Vult.

TERRELL, AG. C. J.—This is a reference to the Court by the Collector of Land Revenue, Klang, with the sanction of the Commissioner of Lands, under Section 238 of the Land Code.

The question arose upon the sale of land held under E.M.R. at the instance of the chargee.

The original reserve price fixed by the Collector was $31,350/–. After one or two abortive attempts to sell the chargee bought in for $28,000/– and the land was transferred to the chargee, a memorial of the cancellation of the